



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0760; FRL-9909-91-R04]

Approval and Promulgation of Implementation Plans; State of Florida:

New Source Review - Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), Division of Air Resources Management, to EPA on December 19, 2013. The SIP revision modifies Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) permitting regulations to provide FDEP with the authority to issue PSD permits governing greenhouse gas (GHG) emissions, to establish appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Florida's PSD permitting requirements for their GHG emissions, and to facilitate the implementation of GHG Plantwide Applicability Limits (PALs) by allowing consideration of GHG PALs in determining whether GHGs are "subject to regulation." The changes to Florida's regulations also update Florida's SIP to incorporate provisions addressing issuance of GHG PALs on a carbon dioxide equivalent (CO₂e) basis. EPA is taking final action to approve Florida's December 19, 2013 SIP revision because it is in accordance with the Clean

Air Act (CAA or Act) and EPA regulations regarding the PSD permitting program. Concurrent with this final approval, EPA is rescinding the GHG PSD Federal Implementation Plan (FIP) for Florida that was put in place on December 30, 2010, to ensure the availability of a permitting authority for GHG permitting in Florida.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0760. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday from 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding Region 4 NSR and GHG permitting, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562-9214; email address: adams.yolanda@epa.gov. For Information regarding EPA's GHG SIP Call or FIP, contact Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-4391, facsimile number: (919) 541-5509, e-mail address: vetter.cheryl@epa.gov.

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I. Background

Florida's December 19, 2013 SIP revision provides the State the authority to regulate GHG¹ emissions under its PSD program and establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule, 75 FR 31514 (June 3, 2010).² These GHG PSD applicability provisions became State effective on October 23, 2013. Additionally, Florida's December 19, 2013 submission reflects the fact that Florida has updated State law to incorporate by reference³ certain changes made to 40 CFR part 52 related to the implementation of GHG PALs that were promulgated in EPA's July 12, 2012, Step 3 GHG Tailoring Rule.⁴ This change to state law results in an update to the incorporation by reference of the portions of 40 CFR 52.21 cited in Florida's existing SIP-approved PAL regulations, such that those provisions now include provisions of 40 CFR 52.21 that, among other things, address issuance of GHG PALs on a CO₂e basis in addition to the available mass-basis. EPA's final approval of Florida's December 19, 2013 SIP revision includes approval of Florida's GHG PSD Permit Transition Plan, under which EPA will transfer existing EPA-issued GHG permits for Florida sources to Florida for administration and enforcement. Florida's Transition Plan also included that EPA would retain PSD permit implementation authority

¹ Throughout this document, where appropriate, EPA will use the acronyms "GHG" and "GHGs" to express the term greenhouse gas or greenhouse gases, respectively.

² "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule," 75 FR 31514 (June 3, 2010) (GHG Tailoring Rule).

⁴ "Prevention of Significant Deterioration and Title V Operating Permit Greenhouse Gas (GHG) Tailoring Rule Step 3 and GHG Plantwide Applicability Limits," 77 FR 41051 (July 12, 2012) (Step 3 GHG Tailoring Rule). Step 3 of the Tailoring Rule included revisions to the regulations at 40 CFR 52.21 that allow GHG PALs under those regulations to be established on a CO₂e basis in addition to the previously available mass basis and allow a GHG-only source to obtain a GHG PAL under those regulations while still maintaining its minor source status, so long as it complies with its PAL and its GHG emissions remain below the PAL. *See* 77 FR 41051.

(under 40 CFR 52.21) for pending GHG permit applications, draft permits, and final permits for which final agency action has not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR part 124 (including any associated remand actions) have not been completed by the effective date of today's final action. However, because there are no such GHG PSD permits (as describe above) before EPA for review or process, this portion of Florida's GHG Transition Plan (the management of pending GHG PSD projects) is no longer applicable. Therefore, EPA is not taking final action to retain implementation authority (under 40 CFR 52.21) for pending GHG permit applications, draft permits, and final permits for which final agency action has not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR part 124 (including any associated remand actions) have not been completed by the effective date of today's final action. Florida will assume full responsibility for the administration and implementation of such GHG PSD permits immediately upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions have been completed or concluded for any such permit application.

On December 30, 2010, EPA promulgated a GHG PSD FIP for Florida (among other states/areas) to ensure the availability of a permitting authority for GHGs where no authority was available.⁵ See 75 FR 82246. Concurrent with this final approval, EPA is rescinding the GHG PSD FIP for Florida at 40 CFR 52.37 that was put in place on December 30, 2010, to ensure EPA was the GHG permitting authority in the State of Florida.

⁵ "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010) (GHG PSD FIP).

Detailed background information for today's final rule including EPA's national actions pertaining to PSD permitting of sources of GHGs is provided in EPA's January 7, 2014, proposed rulemaking. *See* 79 FR 778. Comments on the proposed rulemaking were due on or before February 6, 2014, and EPA received one comment on the proposed rulemaking. The comment received was related to the use of E15 (15 percent ethanol) in gasoline for motorcycles and is irrelevant to EPA's action to approve Florida's December 19, 2013 SIP revision to adopt PSD permitting provisions to regulate GHG-emitting sources in the State. Therefore, EPA need not provide a response to this comment for today's final rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Florida's NSR PSD program as submitted in its December 19, 2013 SIP revision, and to rescind the GHG FIP for Florida at 40 CFR 52.37(b)(3).

II. This Action

EPA is taking final action to approve Florida's December 19, 2013 SIP revision to adopt the Federal PSD permitting requirements related to the regulation of GHG-emitting sources. Florida's NSR permitting program is based on the application of the term "*PSD pollutant*" at Rule 62-210.200(234), F.A.C. Florida previously defined "*PSD pollutant*"⁶ as any pollutant

⁶ Florida adopted into its SIP the term "*PSD pollutant*" (which references significant emissions rate) to replace the term "*NSR Pollutant*" at Rule 62-210.200, F.A.C. as part of its February 3, 2006, SIP submission to adopt the 2002 NSR Reform permitting provisions. *See* 73 FR 36435 (June 27, 2008). At that time, FDEP provided EPA with an equivalency demonstration establishing the definitions of "*PSD pollutant*" and "*significant emissions rate*" as being equivalent to the Federal definition of "*regulated NSR pollutant*" since they included all pollutants for which a national ambient air quality standard (NAAQS) had been promulgated, all precursors for such pollutants which had been identified by the Administrator, all pollutants subject to standards promulgated under section 111 of the Act, and all pollutants regulated under the Act. Florida's definitions however lacked the catch-all phrase "*subject to regulation*," which is part of the Federal definition of "*regulated NSR pollutant*." Florida explained that if any new pollutant or precursor subsequently became "*subject to regulation*," Florida would revise its SIP to include such new pollutant or precursor soon thereafter.

listed as having a “*significant emission rate*” as defined in Rule 62-210.200. Chapter 62–210, F.A.C. entitled “*Stationary Sources—General Requirements,*” contains definitions of terms (at Rule 62-210.200, F.A.C.) used in Chapter 62–212, F.A.C.,⁷ as well as other stationary source rules. Florida’s December 19, 2013 SIP submission revises the definition of “*PSD pollutant*” at 62-210.200 to incorporate the term “*regulated NSR pollutant*” as defined in 40 CFR 52.21(b)(50), which in turn references the term “*subject to regulation*” (defined at 40 CFR 52.21(b)(49)). The definition of “*subject to regulation*” at 40 CFR 52.21(b)(49) specifies the circumstances under which GHGs are considered subject to regulation and therefore regulated under the PSD program. The term “*subject to regulation*” in turn references the PAL provisions at 52.21(aa)(1) through (15) and, as explained in more detail below, would allow consideration of GHG PALs in determining whether GHGs are “subject to regulation.” In relevant part, Florida’s revised definition of “*PSD pollutant*” provides:

62-210.200 – PSD pollutant - (a) Any pollutant listed as having a significant emission rate as defined in Rule 62-210.200, F.A.C.; and

(b) Any Regulated NSR Pollutant as defined at 40 CFR 52.21(b)(50) and as adopted and incorporated by reference at Rule 62-204.800, F.A.C..

⁷ Chapter 62–210, F.A.C., also establishes general permitting, public notice, reporting, and permit application requirements. Chapter 62–212, F.A.C., entitled “*Stationary Sources—Preconstruction Review*” contains specific preconstruction permitting requirements for various types of air construction permits, including minor source permits, PSD permits, nonattainment new source review permits, and PALs permits. Rule 62–212.400, F.A.C. contains the State’s PSD preconstruction review program as required under part C of title I of the CAA. The PSD program applies to major stationary sources or modifications constructing in areas that are designated as attainment or unclassifiable with respect to the NAAQS.

As provided in the December 19, 2013 SIP submission, Florida’s amendment to “*PSD pollutant*” to include the phrase “Any Regulated NSR Pollutant” as defined at 40 CFR 52.21(b)(50) does not, in and of itself, provide Florida the authority to regulate GHGs in its PSD program. Florida’s State Rule 62-204.800, F.A.C., incorporation by reference the relevant section of the Code of Federal Regulations (CFR) (including 40 CFR 52.21) into the Florida regulations, as well as specified amendments thereto.⁸ To “activate” the applicability of a Federal rule within Florida’s regulations, the state references Rule 62-204.800, F.A.C. within the state regulations (such as 62-210.200).⁹ The previous incorporation by reference of Federal provisions at 40 CFR 52.21 into State Rule 62-204.800, F.A.C. predated EPA’s adoption of the GHG Tailoring Rule and the Step 3 GHG Tailoring Rule. In order for the incorporation by reference of EPA’s updated definition of “*regulated NSR pollutant*” at 40 CFR 52.21(b)(50) to be applicable in Florida’s regulations, FDEP amended State Rule 62.204.800, F.A.C., to incorporate by reference 40 CFR 52.21, Subpart A as of July 1, 2011, and as amended on July 12, 2012 at 77 FR 41051. This amendment to Rule 62-204.800 became state effective on December 17, 2013.¹⁰ This change incorporates into the F.A.C. the applicable GHG regulations established in the GHG Tailoring Rule and ensures that the provisions of 40 CFR 52.21

⁸ When FDEP incorporates by reference a Federal regulation, any subsequent change to the Federal CFR is not automatically incorporated into Florida’s rules. See Section 120.54(1)(i)1., F.S. (“A rule may incorporate material by reference but only as the material exists on the date the rule is adopted.”).

⁹ The incorporation by reference of the CFR (such as 40 CFR 52.21) at 62-204.800 does not by itself make those regulations applicable within Florida’s SIP regulations; it’s the actual reference to State Rule 62-204.800 within Florida regulations that makes the Federal regulation applicable. In other words, Rule 62-204.800, F.A.C., is the mechanism Florida uses to make specific Federal requirements applicable within SIP-approved regulations.

¹⁰ Florida’s Rule 62-204.800, F.A.C., is a state law. Therefore the amendment to update the incorporation by reference date for 40 CFR 52.21 at 62-204.800 is not part of the State’s December 19, 2013 SIP revision. However, as noted, without it the reference to 40 CFR 52.21(b)(50) in the definition of “*PSD pollutant*” would be referring to an older version of 40 CFR 52.21 which did not include the GHG Tailoring Rule’s regulatory amendments for *regulated NSR pollutant* and the inclusion of “*subject to regulation*” (nor the Step 3 GHG Tailoring Rule)

incorporated into Florida's regulations reflect revisions in the PALs program to address GHGs that were finalized in the Step 3 GHG Tailoring Rule.

In addition to ensuring that Florida's definition of "*PSD pollutant*" incorporates the EPA's updated definition of "*regulated NSR pollutant*," Florida's updated incorporation by reference of 40 CFR 52.21 in State Rule 62-204.800, F.A.C. results in an update to the incorporation by reference of portions of 40 CFR 52.21 cited in Florida's existing SIP-approved PAL regulations in Florida's PSD Rule 62-212.720, F.A.C.¹¹ This update incorporates changes made to 40 CFR 52.21 promulgated in the July 12, 2012 Step 3 GHG Tailoring Rule. Step 3 of the Tailoring Rule finalized revisions to the regulations at 40 CFR 52.21 to enable the establishment of GHG PALs on a CO₂e basis in addition to the available mass-basis and to allow a GHG-only source to apply for a GHG PAL while still maintaining its minor source status. *See* 77 FR 41051 and 79 FR 778.

Therefore, taken together, Florida's amendment to the definition of "*PSD pollutant*" at Rule 62-210.200, F.A.C., and its update to the incorporation by reference of 40 CFR 52.21 in

¹¹ EPA initially adopted the PAL regulations into the Florida SIP on June 27, 2008, at Rule 62-212.720, F.A.C., as part of the State's February 3, 2006, SIP submission to adopt the 2002 NSR Reform permitting provisions (which established the PALs provisions). *See* 73 FR 36435. In relevant part, Florida's regulations at 62-212.720, F.A.C., incorporation by reference specific provisions from EPA's PAL rules at 40 CFR 52.21(aa), adopted by reference in Rule 62-204.800, F.A.C. The relevant portion of the updated version of Florida's Rule 62-204.800, F.A.C., states: "(3) Title 40, Code of Federal Regulations, Part 52, Approval and Promulgation of Implementation Plans. The following subparts of 40 CFR Part 52, revised as of July 1, 2003, or later as specifically indicated, are adopted and incorporated by reference: (a) 40 CFR Part 52, Subpart A, General Provisions; revised as of July 1, 2011 (<https://www.flrules.org/Gateway/reference.asp?No=Ref-03499>), or later as specifically indicated, are adopted and incorporated by reference; amended July 12, 2012, at [77 FR 41051](https://www.flrules.org/Gateway/reference.asp?No=Ref-03489) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-03489>); amended October 25, 2012, at [77 FR 65107](https://www.flrules.org/Gateway/reference.asp?No=Ref-03486) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-03486>); amended January 15, 2013, at [78 FR 3085](https://www.flrules.org/Gateway/reference.asp?No=Ref-03487) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-03487>)."

The July 12, 2012 amendments at [77 FR 41051](https://www.flrules.org/Gateway/reference.asp?No=Ref-03487) are those made under the Step 3 GHG Tailoring Rule described earlier in this preamble. *See also* 77 FR 41051. Therefore, the specific provisions of 40 CFR 52.21 that are incorporated into Florida's regulations include any amendments made as part of the Step 3 Tailoring Rule.

State Rule 62-204.800 provide Florida the authority to regulate GHG under the PSD program, establish in the Florida SIP the thresholds for GHG permitting promulgated in the GHG Tailoring Rule, and update provisions previously incorporated into Florida's regulations to reflect the revisions relating to GHG PALs promulgated in the Step 3 GHG Tailoring Rule.

As discussed in EPA's January 7, 2014, proposed rulemaking, Florida included a GHG PSD Permit Transition Plan in its December 19, 2013 SIP submission. *See* GHG Transition Plan in Appendix B of Florida's December 19, 2013 submission in the docket using Docket ID: EPA-R04-OAR-2013-0760. Under the plan, FDEP would exercise its authority to administer and enforce GHG PSD permits issued by EPA under its FIP to sources located in the State of Florida.¹² Pursuant to the criteria under section 110(a)(2)(E)(i) of the CAA, EPA has determined that Florida has the authority, personnel, and funding to implement the PSD program for GHGs for existing EPA-issued permits. Therefore, concurrent with EPA's approval of Florida's December 19, 2013 GHG SIP revision, EPA will transfer existing EPA-issued GHG permits for Florida sources to FDEP for administration and enforcement.¹³

In EPA's January 7, 2014 rulemaking the Agency proposed to retain GHG PSD permit implementation authority at 40 CFR 52.530 for pending applications, draft permits, and final permits for which final agency action had not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR part 124 (including any associated remand

¹² This includes authority for the general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits including, but not limited to, modifications, amendments, or revisions of any nature, and the authority to enforce such permits.

¹³ At the time this final rulemaking was published, EPA Region 4 had issued four, final and effective GHG PSD permits for Florida sources for Florida Power & Light Company (FPL)—Port Everglades Plant (Permit PSD-EPA-R4010), Tampa Electric Company—Polk Power Station (Permit PSD-EPA-R4014), EFS Shady Hills LLC—Shady Hills Generating Station (Permit PSD-EPA-R4013) and New Hope (Permit –PSD-EPA-R4016). EPA has provided FDEP with a copy of these permits and will provide a copy of the permit records upon request.

actions).¹⁴ See 79 FR 778 at 783. However, since publication of EPA's proposed rule, the administrative and procedural status of Florida GHG PSD permits have changed resulting in four final GHG PSD permits being issued and three permits withdrawn by the respective facilities. Therefore at the time of finalization of this rulemaking, no such GHG PSD permits in various stages described above were before EPA for review. For that reason, the retaining of GHG PSD permit implementation authority at 40 CFR 52.530 is no longer relevant nor required. Therefore, EPA is not taking final action to retain implementation authority at 40 CFR 52.51 for pending applications, draft permits, and final permits for which final agency action had not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR part 124 (including any associated remand actions). EPA is not altering FDEP's original GHG Transition Plan but rather adapting to the current circumstances.

As mentioned above and as a result of this approval, EPA is rescinding the GHG PSD FIP for Florida codified at 40 CFR 52.37(b)(3) that was put in place on December 30, 2010, to ensure EPA was the applicable permitting authority for GHG permitting in Florida. This GHG FIP is no longer necessary since approval of Florida's December 19, 2013 SIP revision establishes PSD applicability thresholds for GHG emissions at the same emissions thresholds and in the same timeframes as those specified by EPA in the GHG Tailoring Rule, giving FDEP the authority to regulate GHG-emitting sources and to issue GHG PSD permits. Therefore, this final action removes Florida from the GHG FIP list at 40 CFR 52.37(b)(3). Upon the effective date of today's final rulemaking to approve the Florida's December 19, 2013 SIP revision, FDEP will immediately assume full responsibility for new GHG PSD applications for Florida sources.

¹⁴ In FDEP's GHG Transition Plan the State indicated that EPA would retain GHG PSD permit implementation authority for pending applications and/or permits or final permits (not yet effective) in various stages of process and review.

As such, new applications will be submitted to and processed by FDEP's Division of Air Resource Management.

III. Effective Date of This Action

EPA is making [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] the effective date of today's final action. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before, the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's final rule provides Florida with the authority to regulate GHG-emitting sources making FDEP the sole PSD permitting authority in the State. Additionally, an immediate effective date would promote an orderly transition of the GHG PSD program from the EPA to Florida, the efficient use of Florida's and EPA's resources, and certainty for the regulated community and the public. For this reason, EPA finds good cause under 5 U.S.C.553(d)(3) for this action to become effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Final Action

Florida's December 19, 2013 SIP revision amends the State's definition of "*PSD pollutant*" to provide Florida with the authority to regulate GHG under its PSD program, to establish PSD applicability thresholds for GHG emissions at the same emissions thresholds and in the same timeframes as those specified by EPA in the GHG Tailoring Rule, and to facilitate the implementation of GHG PALs by allowing consideration of GHG PALs in determining whether GHGs are "subject to regulation." The changes to Florida's regulations also update Florida's SIP to incorporate provisions addressing issuance of GHG PALs on a CO₂e basis. EPA has made the determination that Florida's December 19, 2013 SIP revision is consistent with EPA's PSD regulations for GHG-emitting sources as promulgated in the GHG Tailoring Rule, Step 3 GHG Tailoring Rule and section 110 of the CAA. Therefore, EPA is taking final action to approve Florida's December 19, 2013 SIP submission.

EPA is also taking final action to rescind the Florida GHG PSD FIP at 40 CFR 52.37(b)(3). EPA's approval of Florida's December 19, 2013 SIP revision includes approval of FDEP's GHG PSD Permit Transition Plan, under which EPA will transfer existing EPA-issued GHG permits for Florida sources to Florida for administration and enforcement. However, EPA is not taking final action to retain PSD permit implementation authority at 40 CFR 52.530 for pending GHG permit applications, draft permits, and final permits for which final agency action has not been taken or for which all administrative and judicial appeals processes pursuant to 40 CFR part 124 (including any associated remand actions) have not been completed by the effective date of today's final action because there are currently no such GHG PSD permits

before the agency for review. Additionally, EPA finds good cause under 5 U.S.C.553(d) for this action to become effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Upon the effective date of today's final rulemaking to approve the Florida's December 19, 2013 SIP revision, FDEP will immediately assume full responsibility for new GHG PSD applications for Florida sources. As such, new applications will be submitted to and processed by FDEP's Division of Air Resource Management.

V. Statutory and Executive Order Reviews

A. Executive Order 12866--Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. because this SIP approval and FIP rescission under section 110 and part C of the CAA will not in-and-of itself create any new information collection burdens but simply transfers the permitting authority from EPA to the State. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule will transfer GHG PSD permitting responsibility from EPA to the State of Florida. This final rule applies to large GHG emitters that tend to be large sources. Further, this rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and part C of the CAA do not create any new requirements but simply approve existing requirements in State law. The result of this final action simply is to transfer authority to administer the PSD program for GHGs from EPA to the State of Florida. The substantive requirement for a source to obtain a PSD permit prior to construction of a new major source of GHGs or modification of an existing major source that will significantly increase GHGs is not changed by this final action. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a

substantial number of small entities. This final rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no additional enforceable duty on any State, local or tribal governments or the private sector beyond that required by state law. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action transfers permitting responsibility of GHG emissions from EPA to the State of Florida. Small governments are not impacted.

E. Executive Order 13132--Federalism

This action does not have federalism implications. It will not have substantial direct effects on Florida, on the relationship between the national government and the State of Florida, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA specifies conditions under which states may request, and EPA may approve state implementation of CAA requirements. This rulemaking approves PSD permitting provisions in the State of Florida for GHG emissions, and as a consequence of the SIP approval, simultaneously rescinds Federal PSD permitting responsibility

for GHG emissions in Florida. This rulemaking is pursuant to the SIP approval and requirements of the CAA. As such, this final rule does not change the balance of power between Florida and EPA as provided for in the CAA. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials. EPA received no comments from state or local governments on this rulemaking.

F. Executive Order 13175--Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to Florida's SIP related to GHG PSD permitting. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045--Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because EPA is approving revisions to the Florida PSD SIP for permitting of GHG emissions, as authorized by the CAA.

H. Executive Order 13211--Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898--Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by

identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not alter the level of protection provided to human health or the environment by the PSD program. Rather, the result of this final action is to transfer authority over the administration of CAA requirements governing PSD permitting for GHGs from EPA to the State of Florida. This transfer of authority will not have any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule approves the Florida SIP as meeting Federal requirements for GHG PSD permitting and imposes no additional requirements beyond those imposed by Florida law.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C.

804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2); 5 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gas, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 1, 2014.

Gina McCarthy,
Administrator, U.S. EPA.

40 CFR part 52 is amended as follows:

PART 52 –APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart A – General Provisions

§ 52.37 – [Amended]

2. Section 52.37 is amended by removing and reserving paragraph (b)(3).

Subpart K – Florida

3. Section 52.520(c) is amended under Chapter 62-210 by revising the entry for “Section 62-210.200”, by revising the heading for Chapter 62-212, and under Chapter 62-212 by revising the entry for ” Section 62-212.720” to read as follows:

§52.520 Identification of plan.

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(c)* * *

EPA-Approved Florida Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
**	**	*	*	*
62–210.200	Definitions	10/23/13	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	As of September 19, 2012, 61-210.200 does not include Florida's revision to adopt the PM _{2.5} SILs

				threshold and provisions (as promulgated in the October 20, 2010, PM _{2.5} PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)).
**	**	*	*	*
Chapter 62-212 Stationary Sources—Preconstruction Review				
**	**	*	*	*
62-212.720	Actuals Plantwide Applicability Limits (PALs)	12/17/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	As of [Insert date of publication in <u>Federal Register</u>] the PAL provisions include certain revisions to 40 CFR 52.21 finalized July 12, 2012 (Step 3 GHG Tailoring Rule) and relating to GHG PALs, which are incorporated by reference at 62- 212.720 through Florida State Rule 62.204.800, F.A.C., (which incorporates by reference 40 CFR 52.21, subpart A as of July 1, 2011, and as amended on July 12, 2012 at 77 FR 41051.December 17, 2013.)
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4. Section 52.530 is amended by adding paragraph (b) to read as follows:

§ 52.530 Significant deterioration of air quality.

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(b) Pursuant to part C, subpart 1 of the Clean Air Act, EPA is approving a December 19, 2013 SIP revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), Division of Air Resource Management that establishes prevention of significant deterioration (PSD) applicability thresholds for greenhouse gas (GHG) emissions at the same emissions thresholds and in the same timeframes as those specified by EPA in the GHG Tailoring Rule. This approval gives FDEP the authority to regulate GHG-emitting sources and issue GHG PSD permits. FDEP's December 19, 2013 SIP revision also includes a GHG PSD Permit Transition Plan which governs the transition from EPA administering GHG PSD permitting requirements for Florida sources under a Federal Implementation Plan (FIP) to the State administering GHG PSD permitting requirements under its approved SIP. Under this GHG PSD Permit Transition Plan, FDEP will administer and enforce GHG PSD permits issued by EPA to Florida sources under the GHG PSD FIP. FDEP's authority over these existing EPA-issued GHG PSD permits includes the authority for FDEP to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

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[FR Doc. 2014-11211 Filed 05/16/2014 at 8:45 am; Publication Date: 05/19/2014]